



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/243,568	02/03/99	SCHONROCK	U BEIERSDORF-5

HM12/0317
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EXAMINER

MURRAY, J

ART UNIT	PAPER NUMBER
1613	3

DATE MAILED: 03/17/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/243,568

Applicant(s)
Schonrock et al

Examiner
Joseph Murray

Group Art Unit
1613



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-9 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-9 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Claims 1-9 are pending in the instant application.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for using flavones, flavanones, and flavanoid compounds and ascorbic acid or ascorbyl compounds as antioxidants in cosmetic or dermatological compositions, does not reasonably provide enablement for using the flavone, flavanone or flavanoid compounds to prevent the oxidation of ascorbic acid or ascorbyl compounds. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. While the specification provides sufficient information as to the efficacy of the flavanoids and ascorbyl compounds for use as antioxidants in cosmetic or dermatological compositions it does not provide information as to how the flavanoids are to be used in preventing the ascorbyl compounds from oxidizing, i.e. since both compound classes are known antioxidants how is one going to preferentially prevent the other from being oxidized.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 ln 1 and ln 2-3 the statements "at least one active ingredient chosen from...for protecting at least one active ingredient chosen from..." is unclear. It is unclear how one active ingredient will preferentially prevent another active ingredient in a composition from oxidation. It is suggested that the second occurrence of "at least one" be changed to --a second--.

Regarding claim 6, the phrases "such as", and "for example" renders the claim indefinite because they are unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 04099730 or JP 04099771.

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The instant application claims a method of use of flavones, flavanols, and flavanoids for the protection of ascorbic acid or ascorbyl compounds from oxidation, where the compounds are in a cosmetic or dermatological composition.

The references, *supra*, both disclose the use flavanoid glycosides for the prevention of the browning of ascorbic acid, and that the combination are useful in cosmetic compositions, see abstract. However, the references do not disclose that the 'browning' is a result of oxidation, although it is well known in the art that oxidation of organic compounds results in a discoloration to yellow and brown. Thus, one of ordinary skill in the art would have been motivated to incorporate flavanoid compounds, given the cited references, in a cosmetic composition for preventing the oxidation of ascorbyl compounds. Therefore, it would have been obvious to one of ordinary skill in the art to incorporate flavanoid compounds, given the cited references, in a cosmetic composition for preventing the oxidation of ascorbyl compounds.

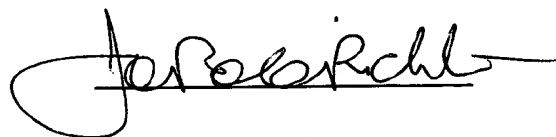
Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Joseph Murray whose telephone number is (703) 308-4540. The examiner can normally be reached from 7:30 to 4:00.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Johann Richter, can be reached on (703) 308-4532. The fax phone number for this group is (703) 308-4556.

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A handwritten signature in black ink, appearing to read "J. Richter", with a large, stylized initial "J" that loops around the start of the name.

Johann Richter
Supervising Patent Examiner
Group 1600

Joseph Murray

March 12, 1999